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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,461	02/09/2001	Peter Kask	P64765US1	6710
136	7590	01/20/2004	EXAMINER	
JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004			LEE, SHUN K	
		ART UNIT		PAPER NUMBER
				2878

DATE MAILED: 01/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/779,461	KASK, PEET
	Examiner Shun Lee	Art Unit 2878

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 December 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 57-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 57-67, 70 and 73 is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) 68, 69, 71, 72, 74 and 75 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 2/9/01 & 12/4/03 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

2. The drawings were received on 4 December 2003. These drawings are not acceptable. The drawings are objected to because of the reasons indicated on PTO-948. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is also objected to because of the following informalities:

- (a) section headings (e.g., Background of the Invention, Brief Summary of the Invention, and Detailed Description of the Invention) should be provided (see 37 CFR 1.77 and MPEP § 608.01(a)); and
- (b) a brief description of the drawings (e.g., Fig. 7) is missing (see 37 CFR 1.74 and MPEP § 608.01(f)).

It is noted that applicant has submitted a specification amendment comprising substantially of pg. 15-17 of the specification as originally filed under the section heading "BRIEF DESCRIPTION OF THE DRAWINGS". However applicant should note that brief is defined¹ as "Short in time, duration, length, or extent" and thus a one page paragraph does not constitute a brief description (it is suggested that a brief description comprise of only the first sentence of the submitted drawing description of Figs. 2-4 and 7 and further that "Reference is now made to " should be deleted).

Appropriate correction is required.

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

5. Claims 68, 69, 71, 72, 74, and 75 are objected to because of the following informalities:

- (a) in claim 68, "the generating function" on line 1 (there is insufficient antecedent basis for this limitation in the claim; see e.g., claim 67);
- (b) in claim 69, "said generating function" on line 1 (there is insufficient antecedent basis for this limitation in the claim; see e.g., claim 67);
- (d) in claim 71, "said photon detector" on line 1 should probably be --said at least one photon detector--;

¹ The American Heritage® Dictionary of the English Language, Third Edition copyright © 1992 by

- (e) in claim 72, "at least two photon detector are used" on line 1 should probably be --
said at least one photon detector are at least two photon detectors which are used
for--;
- (f) in claim 74, "particles in at least one measurement volume are monitored by
detecting sequences of photon counts using at least one photon detector, which
photon detector" on lines 2-3 should probably be --the particles in said at least one
measurement volume are monitored by detecting said sequences of photon
counts using said at least one photon detector, said at least one photon detector
which--;
- (g) in claim 75, "a measurement volume (26)" on lines 3-4 should probably be --a
measurement volume (26) of said at least one measurement volume--; and
- (h) in claim 75, "a detector (42)" on line 5 should probably be --a detector (42) of said
at least one photon detector--.

Appropriate correction is required.

Allowable Subject Matter

6. Claims 57-67, 70, and 73 are allowed.
7. The following is a statement of reasons for the indication of allowable subject matter: the instant application is deemed to be directed to an nonobvious improvement over the invention patented in US Patent 6,515,289. The improvement comprises in combination with other recited elements, that the distribution function of particles is determined by fitting the experimentally determined probability functions by

corresponding theoretical probability functions wherein the theoretical probability functions are calculated as functions of apparent concentrations and apparent brightness which depend on the widths of the counting time intervals in the different sets.

Conclusion

8. This application is in condition for allowance except for the following formal matters: drawing, specification, and claim objections noted above.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shun Lee whose telephone number is (703) 308-4860. The examiner can normally be reached on Monday-Thursday.

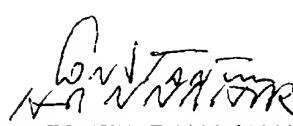
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Porta can be reached on (703) 308-4852. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Application/Control Number: 09/779,461
Art Unit: 2878

Page 6

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CONSTANTINE HANNAHER
PRIMARY EXAMINER
GROUP ART UNIT 2878